



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

---

*271 Cadman Plaza East  
Brooklyn, New York 11201*

June 25, 2021

***VIA ECF***

Honorable Sanket J. Bulsara  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: *Erick Diaz Cruz v. United States of America and Henry V. Santana*  
Case No.: 20-CV-891 (EK) (SJB)

Dear Judge Bulsara:

This Office represents Defendant United States of America in the above-referenced action. The United States respectfully requests that this matter be stayed pending the outcome of an open criminal investigation. The United States also proposes submission a status letter every 30 days to update the Court on the status of the investigation.

By way of background, Plaintiff Erick Diaz Cruz commenced this action on February 20, 2020, against Immigration and Customs Enforcement Officer Henry V. Santana, asserting claims pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiff alleges that Defendant Santana is individually liable for Constitutional violations stemming from a February 6, 2020 incident in which Plaintiff was shot by Officer Santana. *See* Dkt. No. 1. On April 20, 2021, Plaintiff filed an Amended Complaint asserting claims against the United States arising from the same shooting. *See* Dkt. No. 29. Plaintiff brings his claims against the government pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680.<sup>1</sup>

Plaintiff does not consent to stay this action. Plaintiff has no objection to a 30-day extension of time for the United States to respond to the Amended Complaint, as well as an adjournment of the settlement conference currently scheduled for July 14, 2021.

The United States requests the stay for three reasons. First, due to the open criminal investigation, this Office has been unable to obtain necessary documents and information concerning the shooting to determine the most appropriate response to the Amended Complaint. Second, the pending investigation would certainly hinder the parties' ability to exchange

---

<sup>1</sup> Officer Santana has separate counsel. Pursuant to the Court's May 20, 2021 Order, Officer Santana has served (but not filed) a motion to dismiss the *Bivens* claims contained in the Amended Complaint.

documents and conduct depositions. Third, the outcome of the investigation could substantially affect the litigation position of the parties.

Accordingly, the United States proposes that the Court stay this action and that the government file of a status letter every 30 days starting on July 26, 2021 to update the Court on the status of the pending criminal investigation.

The government thanks the Court for considering this request.

Respectfully submitted,

JACQUELYN M. KASULIS  
ACTING UNITED STATES ATTORNEY

By: s/ Dara A. Olds  
DARA A. OLDS  
Assistant United States Attorney  
(718) 254-6148  
[dara.olds@usdoj.gov](mailto:dara.olds@usdoj.gov)

cc: All attorneys of record via ECF